

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE MARILYN MORGAN, JUDGE

In Re:) Case No. 03-51775-MM
) Case No. 03-51776-MM
) Case No. 03-51777-MM
SONICBLUE INCORPORATED;) Case No. 03-51778-MM
DIAMOND MULTIMEDIA SYSTEMS, INC.;) Chapter 11
REPLAYTV, INC.; SENSORY SCIENCE) (Jointly Administered)
CORPORATION,)
)
Debtors.) Thursday, June 14, 2007
) (Morning and Afternoon)
) San Jose, California

Hearing on:

Application for an order pursuant to Section 327(a) authorizing the retention of Alston & Bird LLP as counsel to Dennis J. Connolly, the Chapter 11 Trustee;

Application for an order pursuant to Section 327(a) authorizing the retention of Friedman, Dumas & Springwater LLP as local counsel to Dennis J. Connolly, the Chapter 11 Trustee;

Objection to trustee's proposed counsel by York Credit Opportunities Fund, L.P.

Motion to amend October 17, 2003 protective order.

Appearances:

For Chapter 11 Trustee and Movant Dennis J. Connolly:	Grant T. Stein, Esq. Alston & Bird 1201 West Peachtree Street Atlanta, Georgia 30309-3424
	Cecily A. Dumas, Esq. Friedman, Dumas & Springwater 150 Spear Street, Suite 1600 San Francisco, California 94104
Chapter 11 Trustee:	Dennis J. Connolly, Esq. Alston & Bird, LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424

Appearances continued on next page.

Appearances continued:

For York Credit Opportunities Fund, L.P.:	Michael St. James, Esq. St. James Law 155 Montgomery Street, Suite 1004 San Francisco, California 94104
For the Creditors' Committee (via telephone):	Ron Bender, Esq. Craig M. Rankin, Esq. Levene Neale Bender Rankin & Brill, LLP 10250 Constellation Boulevard Suite 1700 Los Angeles, California 90067
For Citadel Equity Fund:	Van C. Durrer II, Esq. Skadden Arps Slate Meagher & Flom LLP 300 South Grand Avenue, Suite 3400 Los Angeles, California 90071
From the U.S. Trustee:	Nanette Dumas, Attorney United States Trustee, Region 17 United States Department of Justice 280 South First Street, Room 268 San Jose, California 95113
For SonicBlue Claims LLP:	Bernard S. Greenfield, Esq. McGrane Greenfield LLP 40 South Market Street, Seventh Floor San Jose, California 9513
	Robert A. Greenfield, Esq. Stutman Treister & Glatt, P.C. 1901 Avenue of the Stars, 12 th Floor Los Angeles, California 90067-6013
For Portside Growth and Opportunity Fund; Smithfield Fiduciary; Citadel Equity Fund:	Lewis Kruger, Esq. Stroock, Stroock & Lavan 180 Maiden Lane New York, New York 10038
For Creditor Riverside Claims:	Robert A. Franklin, Esq. Murray & Murray, P.C. 19400 Stevens Creek Boulevard, Suite 200 Cupertino, California 95014-2548

Appearances continued on next page.

Appearances continued:

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1 Thursday, June 14, 2007

10:32 o'clock a.m.

2 P R O C E E D I N G S

3 THE CLERK: All rise. This is the United States
4 Bankruptcy Court for the Northern District of California.

5 Court is now in session.

6 THE COURT: Good morning.

7 [COUNSEL]: Good morning, Your Honor.

8 THE CLERK: Item 1, SONICblue, Incorporated.

9 MS. CECILY DUMAS: Good morning, Your Honor. Cecily
10 Dumas appearing on behalf of the trustee.

11 THE COURT: Okay. It's interesting that we have two
12 Dumas in a row.

13 (Laughter.)

14 MS. NANETTE DUMAS: And good morning, Your Honor.
15 Nanette Dumas – no relation to Cecily Dumas –

16 THE COURT: Okay.

17 MS. NANETTE DUMAS: – for the U. S. Trustee.

18 THE COURT: Good morning.

19 MR. ST. JAMES: Good morning, Your Honor. Michael St.
20 James appearing for York Credit Opportunities. Let me thank the
21 Court for accommodating my schedule. I really apologize.

22 THE COURT: I'm glad we were able to do that.

23 MR. ST. JAMES: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. BERNARD GREENFIELD: Good morning, Your Honor.

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1 Bernard Greenfield for SBC Claims.

2 MR. ROBERT GREENFIELD: Good morning, Your Honor.
3 Robert A. Greenfield of Stutman, Treister and Glatt,
4 Professional Corporation, also attorney for SB Claims. No
5 relationship to Bernie.

6 (Laughter.)

7 THE COURT: Many coincidences today.

8 MR. ROBERT GREENFIELD: Although we came from Los
9 Angeles together.

10 THE COURT: Okay.

11 MR. STEIN: Good morning, Judge. Grant Stein, Alston
12 and Bird, on behalf of the trustee.

13 THE COURT: Good morning.

14 MR. KRUGER: Good morning, Your Honor. Lewis Kruger
15 of Stroock, Stroock and Lavan counsel for Portside Growth,
16 Smithfield Fiduciary and Citadel Equity substituting for the
17 Hennigan, Bennett firm.

18 THE COURT: Good morning.

19 MR. KRUGER: I came early this morning to introduce
20 myself what I was going to think about as a noncontroversial day
21 where it would just be nice to come and say hello, but obviously
22 that's not the day we have. It's nice to say hello.

23 THE COURT: Okay. Thank you, sir.

24 MR. FRANKLIN: Good morning, Your Honor. Robert
25 Franklin of Murray and Murray appearing on behalf of creditor,

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1 Riverside Claims.

2 THE COURT: Good morning, Mr. Franklin.

3 MR. DURRER: Good morning, Your Honor. Van Durrer of
4 Skadden, Arps, Slate, Meagher and Flom on behalf of Citadel
5 Equity.

6 THE COURT: Mr. Van Durrer.

7 Mr. St. James, this is your motion.

8 MR. RANKIN: If I may, Your Honor, on the phone Craig
9 Rankin on behalf of the Official Creditors' Committee.

10 THE COURT: Okay. Good morning, Mr. Rankin.

11 MR. RANKING: Thank you, Your Honor.

12 MR. ST. JAMES: Thank you, Your Honor. I'll be brief.
13 I'm sure the Court has had an opportunity to review the papers.

14 And what I'd like to simply note is that as a result
15 of Mr. Stein's comment in his brief I've had an opportunity now
16 to go through the caselaw.

17 And I think that the caselaw is fairly consistent. I
18 have yet to find a case where a court said: This is a really
19 great idea. You know, it'd be wonderful to have trustees
20 represented by their law firms.

21 What you find are cases that accept it as a necessary
22 evil often in cases which are so small that it would not make
23 economic sense to bring in a law firm. And so the trustee
24 represents him or herself, for example, filing an objection to a
25 claim of exemption, or you see it in cases where there's some

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1 urgent crisis where the only way to get the estate protected,
2 for example, to enjoin shipments of assets, or something like
3 that, is for the trustee's law firm to leap into action.

4 This isn't that type of case. This is a case where
5 the law firm that represents the trustee will earn millions of
6 dollars in fees. And there is no particular need to make it the
7 trustee's firm, except for the benefits that the caselaw says
8 are exactly what we should be concerned about.

9 As the Supreme Court said, having a trustee who is
10 interested in the case is not always corrupt, but it is always
11 corrupting. And this is simply not the right case to begin with
12 the trustee who is not disinterested.

13 I'd be happy to respond to any questions the Court
14 has.

15 THE COURT: I think you've thoroughly briefed it.

16 MR. ST. JAMES: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. STEIN: Thank you, Judge.

19 What I want to do is put into perspective the 327(d)
20 issues relating to the trustee's application. And the way to do
21 that, I believe, is to take a look at – and I know you're
22 familiar with them – the March 26th and May 4th orders of the
23 Court, because if you look at those, you can see exactly what
24 directive you have given resulting in the appointment of a
25 trustee and for the trustee to proceed with.

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1 And that, of course, relates to the disqualification
2 of Pillsbury, the facts relating to that as pertains to
3 disgorgement issues. Then we have the issues of the committee,
4 the committee's conduct, the conduct of committee's counsel, the
5 conduct of committee members and how that impacts the VIA
6 settlement, and how that impacts the so-called senior
7 noteholders' priority vis-a-vis VIA, and what that means in this
8 case, and what should be done. So we've gotten some directive
9 from you in that regard.

10 There are – since the case has been filed, there has
11 been a 510 complaint filed by SONICblue Claims and a motion to
12 reconstitute the committee. Those issues, we believe, are
13 subsumed in the direction to the trustee with regard to what
14 we're supposed to investigate and look at.

15 You have also given us direction, Judge, to proceed
16 with plan issues. You're smiling –

17 (Simultaneous talking.)

18 THE COURT: You know, I'm smiling because I was going
19 to open my remarks this afternoon saying that I didn't want
20 anyone to misread that last paragraph in my motion – in my
21 ruling on clarification. And I certainly wouldn't want to
22 presume to direct the trustee how to independently exercise the
23 trustee's judgment. So I was going to clarify that this
24 afternoon.

25 Just so that you know, I do have that on my mind that

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1 I do not intend to direct this case from the bench.

2 MR. STEIN: Well, and I appreciate that Judge, as does
3 the trustee. But to be quite clear, when we sat down and looked
4 at the case, we knew that it had to take two tracks. In other
5 words, to the extent that it matters, and it does, we would
6 agree and have determined independently – the trustee has – plan
7 track, very important.

8 THE COURT: Um-hum.

9 MR. STEIN: Investigation track, very important.

10 With respect to the plan track, in fact, I might be so
11 bold to say some of the lawyers are here today because they know
12 that after the hearings we plan to distribute a plan.

13 The idea is – we've got a disclosure statement hearing
14 on August the 9th. We want to get a plan and disclosure
15 statement filed. We'll move it forward.

16 THE COURT: I'm glad to hear that.

17 MR. STEIN: Thank you.

18 The same with regard to the investigation. On May
19 17th we moved the investigation forward. We sent out to many
20 parties in the case that we knew we would be wanting discovery
21 form informal discovery which focused on getting documents in
22 anticipation of taking depositions, interviews, et cetera.

23 Now how does that fit into today? That's what the
24 protective order hearing this afternoon is about. It was one of
25 the things that we discovered we needed to do as we moved down

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1 that road.

2 Now what does all that have to do with 327(d)? And
3 what it has to do with it is why it is in the best interests of
4 the estate in this case for Mr. Connolly to retain the law firm
5 where he is a partner.

6 And if you look, Judge, at his declaration – and I'm
7 sure you have – that's been filed, specifically paragraphs 6
8 through 12, he walks through the unique and extraordinary
9 experience that we had investigating and investigating the
10 lawyers, if you will, in the Enron case. That is not
11 duplicable.

12 He knows us; he knows what we've done. And we have
13 the experience and can bring that to the table.

14 The same thing with regard to 327 and 2014 issues, and
15 lawyer malpractice issues, and the issues of fee disgorgement.
16 Those are things that we have dealt with that is set forth in
17 his declaration.

18 And that brings me to the issue of, well, if it's all
19 there, what do the cases say about it, if it's in the
20 declaration? One thing the cases do say is that the standard to
21 be met, to fulfill the requirements of 327(d), can be based on
22 affidavits, declaration.

23 So we believe that it is more than sufficient what we
24 have submitted in support of the trustee's retention of counsel.

25 But what I do want to do, and I can't help myself, and

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1 I hope you'll indulge me, I want to walk through the cases for a
2 minute, -

3 THE COURT: That'd be fine.

4 MR. STEIN: - because when you actually look at the
5 cases, and look at what they said, and look at what they held,
6 the important picture comes out.

7 In looking at the cases, one of the cases that's cited
8 in the opposition that's - it's a 1966 case from the Second
9 Circuit, *Matt versus Seligson* (phonetic). I refer to it as "*Ira*
10 *Hope* (phonetic)." It's a case where the court said in a
11 situation where it is a large and complex case that may be
12 special circumstances, and you have to look at what the special
13 circumstances are in approving counsel for the trustee that
14 happens to also be the trustee's law firm.

15 And if you take a look at the *Gem Tire* case, the same
16 thing. The Court actually noted that aspect, the complexity
17 aspect, of the *Ira Hope* case in talking about that issue. Now
18 in *Ira Hope* the lawyers were left in place. There was no 327(d)
19 at the time and the statute and the rules were the way it used
20 to be under the old Act. But the lawyers were left in place.

21 And in the *Gem Tire* case also cited in the various
22 briefs, the court, without prejudice, denied the 327(d)
23 application and said: Come back to me with more evidence, which
24 is the same thing that happened in *InterAmerica* (phonetic) where
25 Judge Isker (phonetic) did the same thing, said: I'm denying

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1 without prejudice. Come back, show me how the best interest of
2 the estate is met in those cases.

3 The next case to address, which is on page 3 of the
4 opposition, is the *Michigan Interstate* case. And in that case
5 the court denied the 327(d) application because the lawyers had
6 no experience in railroad reorganizations. It was a railroad
7 reorg case.

8 The next case is the *Palm Coast* case at 101 F.3d 1966
9 Second Circuit at page 3. And in that case the court said: You
10 can't be approved under 327(d) because you don't meet the
11 statute, because it was a real estate consulting firm that was
12 sought to be retained, not an attorney, not an accountant, which
13 the statute specifically contemplates.

14 *Showcase Jewelry* is cited on page 2. In that case it
15 was a trustee that was an associate of the law firm. And the
16 court said: You can't be an associate in a law firm and hire
17 your law firm. We can't have a situation like that. That's a
18 master-servant imbalance. And that's not acceptable for you to
19 be the attorney in that situation.

20 But the case that really caught my eye and that I
21 think addresses all the issues that we have here was the
22 *Kurtzman* (phonetic) case in 1988 out of the Southern District in
23 New York.

24 And in that case the court denied, having previously
25 approved on numerous occasions, a 327(d) application of counsel.

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1 And why it caught my eye is because I think it will help inform
2 the appropriate analysis here.

3 And the court said as follows: A trustee should only
4 be allowed to retain his law firm upon a showing of the
5 potential benefit to the fiduciary estate. The potential
6 benefit to the fiduciary estate.

7 We believe Mr. Connolly's declaration spells that out
8 clearly. The judge continued: And then only after the court is
9 satisfied that the fiduciary will not succumb to the various
10 temptations presented.

11 That is an issue for Your Honor. We believe that to
12 be the case with regard to a trustee here. We believe it's an
13 appropriate case for the trustee to retain his own law firm.
14 You have to make that assessment, Judge.

15 And then the court concluded: Trust, rectitude, and
16 honor, as well as professional competency must be demonstrated
17 to support a court's confidence in such risky appointments.

18 Again, we believe that has been established in Mr.
19 Connolly's application and in his declaration, which brings me
20 to the last point, Judge.

21 With respect to Friedman, Dumas and Springwater, we
22 believe there's no question that they are appropriately
23 qualified to serve as our local counsel. They have been doing
24 so extremely well, in my view. And we would ask that their
25 appointment be approved along with Alston and Bird's

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1 appointment.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Stein.

4 Is there anyone else who wishes to be heard?

5 Mr. Greenfield.

6 MR. ROBERT GREENFIELD: Yes. Thank you, Your Honor.

7 I'll be very brief.

8 We filed a response. I want to make it clear that
9 we're not objecting to Alston and Bird's appointment as
10 attorney. We think that they're a fine choice.

11 Our issue really involves the Creditors' Committee in
12 this case. I'm kind of new to this case. Mr. Shaffer is away.
13 So I had occasion to read just recently your memorandum
14 decision.

15 And one thing I think really flows from it, and that
16 is how dysfunctional this Creditors' Committee has been in this
17 case and how problematic it has been for quite a long time,
18 although the Court clearly didn't know about it and a lot of the
19 constituents did not as well.

20 The one thing that kind of came from the briefs that I
21 saw filed by both the U. S. Trustee and Mr. Connolly's firm was
22 this issue of legal fees, costs, how do they supervise their own
23 firm, and so forth.

24 The thing, again, that kind of flows very much out of
25 your memorandum was impropriety appearances, minimally,

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1 maximumly, real conflicts. It would be unfortunate in this
2 case, I think, if there wasn't somebody independent around to
3 look at the legal fee issues and the costs because they could be
4 significant. And it really ought to be a committee. And this
5 committee is dysfunctional.

6 We think that there ought to be a reconstituted
7 committee. There's a motion before Your Honor that sets for,
8 unfortunately, in August. We're willing to bring that forward,
9 Your Honor. We think that these really go hand-in-hand.

10 It has no – nothing to say negative about Mr.
11 Connolly, clearly. It's just very difficult, I think – it would
12 be hard for me, if I were trustee, to basically look over the
13 shoulder of my law firm while I get compensation from my law
14 firm as a lawyer.

15 It's just – somebody should not be put in that
16 position. And typically it's not a problem, because you have a
17 strong, functioning, active creditors' committee. And
18 unfortunately we don't yet here in this case, and that's why
19 we're suggesting that those kind of go hand-in-hand.

20 Other than that, I have nothing further to add.

21 THE COURT: I don't really think those comments are
22 directed toward the issue before me this morning. So I'll
23 reserve those for a later determination.

24 Is there anyone who wishes to be heard with respect to
25 this morning's motion?

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1 Mr. Franklin.

2 MR. FRANKLIN: Your Honor, on behalf of Riverside
3 Claims, Riverside would like to note that it has no objection to
4 the pending application.

5 THE COURT: Thank you, Mr. Franklin.

6 Ms. Dumas.

7 MS. NANETTE DUMAS: Your Honor, I'll try to be brief
8 also.

9 Your Honor, on March 26th the Court ordered the
10 appointment of an independent trustee because the case was in a
11 state of gridlock; creditor confidence in the system was deeply
12 shaken. And so the Court ordered the appointment of a neutral,
13 independent party.

14 One of the main arguments that was raised in – by
15 SONICblue Claims in opposition to the appointment of a Chapter
16 11 trustee in support of conversion was the idea that perhaps a
17 Chapter 7 trustee could get the money out to creditors faster.

18 The U. S. Trustee took those concerns very seriously
19 and has been really urging this trustee to focus on getting a
20 plan on file and getting money out to creditors to the
21 undisputed claims as soon as possible.

22 And, as the Court just heard, there's a draft plan
23 that's ready to be circulated to the parties in this courtroom.

24 So I think that the trustee has been very mindful of
25 the concerns of the creditor body, the Court, and the U. S.

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1 Trustee.

2 Your Honor, the U. S. Trustee also shared the Court's
3 concerns expressed in the March 26th opinion that a nationwide
4 search be conducted to find something who was truly an outsider,
5 unconnected, and had the skill set necessary to do a very
6 ambitious job, the two-track approach that Mr. Stein described
7 in detail.

8 The U. S. Trustee put a great deal of effort into that
9 search. And the U. S. Trustee believes that she did find the
10 right person in Mr. Connolly, in his ability to be able to do
11 both things at once and do them well.

12 Having said that, the fact that Alston and Bird is Mr.
13 Connolly's firm, the U. S. Trustee in this instance regards that
14 as an asset, not a liability, because Alston and Bird, the law
15 firm, has those same skills as Mr. Stein has described.

16 So we think that it's a plus for the estate under
17 these particular circumstances to have Alston and Bird serve as
18 trustee's counsel.

19 Moreover, the law supports it. 327(a), the
20 appointment of Alston and Bird completely comports with 327(a),
21 327(d). And I don't believe that the caselaw cited by Mr. St.
22 James is persuasive, to the contrary, at least not under the
23 facts and circumstances of this case.

24 Your Honor, just to – the committee issue is not
25 before the Court today. However, the U. S. Trustee specifically

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1 requested me to advise the Court that the U. S. Trustee has not
2 abdicated her responsibility with respect to the committee.

3 On the contrary, the U. S. Trustee has been very aware
4 of this issue. However, the U. S. Trustee just believes that
5 the issue is premature at this point. The U. S. Trustee is
6 deferring consideration of the issue until the trustee has had a
7 greater opportunity to conduct his investigation and to develop
8 the evidence and the facts.

9 It is very, very important to the U. S. Trustee and to
10 our office that anything that we do be based on a solid
11 evidentiary foundation and that everybody is treated fairly.

12 And I think anybody in this courtroom would want to be
13 treated fairly, as the U. S. Trustee wants the parties to be
14 treated and as the trustee also wants the parties to be treated.
15 That is the reason why there has been no action. It has not
16 been neglect; it has not been any abdication of responsibility.
17 We just wanted the Court to be clear on that.

18 We have an independent trustee in control of this case
19 now. We just want him to be able to do his job unfettered,
20 unhampered, and to be able to get the plan on file, get it
21 confirmed, go forward with the investigation.

22 Therefore, we urge that the Court overrule the
23 objection and appoint Alston and Bird as trustee's counsel.

24 Thank you, Your Honor.

25 THE COURT: Okay. Thank you.

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1 Mr. St. James.

2 MR. ST. JAMES: Thank you, Your Honor. I will be very
3 brief.

4 Your Honor, Alston and Bird is not unique. It is not
5 the only firm in this country that has capable bankruptcy
6 attorneys; it's not the only firm in this country that has
7 assisted in an examination, even a national examination. It's
8 not the only firm in this country that has abilities in
9 evaluating legal ethics, legal malpractice.

10 There were other alternatives. This is a
11 multimillion-dollar decision. I think the Trustee just made the
12 wrong decision, and it's for this Court to say.

13 I will point out that there is no external – there was
14 no external urgency. The Court entered an order that said it
15 was interim and set it for a subsequent hearing.

16 If the answer was it was an interim order and the
17 decision is made permanently, the Court could have done that.
18 People could have done that. There was the, at least, strong
19 suggestion that the issue was still open. And that's why we
20 responded to it.

21 The fact that Alston and Bird has moved rapidly with a
22 plan is a fine thing but, Your Honor, I've inherited cases where
23 a plan has previously been drafted, and I've carried it forward
24 to the finish line. This is not something that a different
25 lawyer could not do.

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1 In the case where the one thing that keeps on getting
2 said is: We need a disinterested trustee, I think the Court
3 should require a disinterested trustee. Thank you, Your Honor.

4 THE COURT: Okay. Thank you, Mr. St. James.

5 Is there anyone else who wishes to be heard at this
6 time?

7 (No audible response.)

8 THE COURT: You know it really wasn't my intent to get
9 into matters other than listening to Mr. St. James present his
10 objection. But I've listened to many other comments this
11 morning, and I'm wondering: Are you all going to come back this
12 afternoon? I hear that you have meetings that will take place,
13 and then you will come back for a hearing at 1:30.

14 So let me just go ahead and rule on the objection.

15 You all have put a lot of thought in it obviously on
16 both sides, have reviewed the law. The one case you didn't find
17 was one that my Law Clerks found for me.

18 And, Mr. St. James, it really does go contrary to the
19 things that you've been saying, given the basis of a lot of the
20 development of this caselaw. I'm quoting from a case of *Palmer*
21 *versus Kennedy, In re Mandell*, 60 F.2d 830-831, Second Circuit,
22 speaking in 1934.

23 They pointed out that the relationship between the
24 attorney and client is highly confidential, demanding personal
25 faith and confidence in order that they can work together

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1 harmoniously. But it's the next sentence that I think was
2 important. They go on to say: Only in the rarest cases should
3 the trustee be deprived of the privilege of selecting his own
4 counsel.

5 And when I listened to all of the arguments, I'm not
6 swayed that we should do anything other in this instance. It's
7 clear from the record that Alston and Bird is qualified. And
8 it's certainly clear from the record that this is an
9 extraordinary case that does require maybe special handling.

10 Your concerns about the fees are understood. You know
11 we do have the fee auditor in place in this case. And everyone
12 I think is looking at fees very closely, particularly the Court,
13 as I understand my independent duty very, very well.

14 With respect to Ms. Dumas' firm, they do regularly
15 practice in courts in the Northern District. And in these days
16 of the electronic filing and telephonic appearances, I don't
17 think her proximity to the Court is that significant. And
18 certainly she's familiar with the Local Rules of the Northern
19 District and very qualified to represent the two cocounsel in
20 this case.

21 So with respect to those two issues, I am going to
22 overrule the objection. I'm not going to grant the motion until
23 our hearing this afternoon.

24 MR. [SPEAKER]: Thank you, Your Honor.

25 THE COURT: Okay. I wish — I hope that you all can

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1 use this time productively. And I appreciate the fact that you
2 have found a use for it. So we're adjourned.

3 [COUNSEL]: Thank you, Your Honor.

4 (The above matter concluded at 10:56 o'clock a.m. and
5 another matter in the same case was taken up at 1:36 o'clock
6 p.m. as follows:)

7 THE CLERK: All rise.

8 THE COURT: Please be seated.

9 THE CLERK: Item 1, SONICblue Incorporated.

10 THE COURT: Could we have your appearances?

11 MR. STEIN: Your Honor, Grant Stein, Alston and Bird,
12 on behalf of the trustee. Cecily Dumas is with me from Friedman
13 and Dumas, Springwater. And the trustee is also in court this
14 afternoon.

15 MR. CONNOLLY: Good afternoon, Your Honor.

16 THE COURT: Okay. Good afternoon to you.

17 MS. NANETTE DUMAS: Good afternoon, Your Honor.
18 Nanette Dumas for the U.S. Trustee.

19 MR. KRUGER: Good afternoon, Your Honor. Lewis Kruger
20 from Stroock, Stroock and Lavan for Portside Growth, Smithfield
21 Fiduciary, and Citadel Equity Fund.

22 MR. GREENFIELD: Good morning, Your Honor. Robert A.
23 Greenfield of Stutman Treister and Glatt, Professional
24 Corporation, attorneys for SONICblue Claims LLC.

25 MR. DURRER: Good afternoon, Your Honor. Van Durrer,

Applications to Retain Counsel and Objection to Proposed Counsel

23

1 Skadden, Arps, Slate, Meagher and Flom for Citadel Equity Fund.

2 MR. BURK: Good afternoon, Your Honor. Bernard Burk
3 for Pillsbury Winthrop.

4 MR. JOHNSON: Good afternoon, Your Honor. Steve
5 Johnson from Gibson Dunn and Crutcher for Intel Corporation.

6 THE COURT: Okay. And do we have telephonic
7 appearances? I didn't check that again. Just one.

8 MR. BENDER: Yes, Your Honor. Ron Bender, Levene
9 Neale Bender Rankin and Brill appearing on behalf of the
10 Creditors Committee. Good afternoon.

11 THE COURT: Okay. Well, good afternoon to you all of
12 you.

13 Now as I indicated for those of you who were here this
14 morning, after I reviewed the record from my prior hearing I
15 thought it would be valuable for me to clarify a few points.

16 First of all, I want it made plain that I am directing
17 this trustee to do anything. I very much appreciate you
18 exercising your independent judgment, Mr. Connolly.

19 MR. CONNOLLY: Yes, ma'am.

20 THE COURT: Okay. And, secondly, Mr. Kruger, I want
21 to make plain that I don't feel that I have predetermined any of
22 the issues that are going to come before us. I want to say that
23 the issues that I ruled on previously arose in a different
24 context. And you'll have since then and will be in the future
25 conducting discovery, so that you will be able to more fully

Discussion on Advancing the Hearing to Reconstitute the Committee

24

1 flush out those issues for the future hearings that we'll have.

2 MR. STEIN: Thank you, Your Honor.

3 THE COURT: Okay. With respect to the trustee's
4 employment applications, you all know that at the request of the
5 objecting party we listened to argument this morning and I went
6 ahead and ruled on the objection that was made and made a record
7 on it. One issue that we didn't touch upon was Mr. Greenfield's
8 comments about wanting to perhaps advance the hearing on
9 reconstituting the committee. And I thought that at some point
10 this afternoon I should ask you all if you wish to be heard on
11 whether or not to advance that hearing.

12 But right now what we have is the trustee's motion for
13 appointment, the two firms, and I'm wondering if anyone else
14 wishes to be heard with respect to the trustee's employment
15 applications.

16 And I note that no one is coming forward to the
17 record. So clearly it appears that the appointment of Alston
18 and Bird as counsel and Friedman, Dumas and Springwater as local
19 counsel is in the best interest of the estate and these
20 applications to retain counsel are approved.

21 Now I would like to hear from you, though, with
22 respect to the issue of whether we should advance the hearing on
23 – on reconstituting the committee and any other issues that you
24 feel are appropriate to raise at this time.

25 Do you wish to be heard on that, Mr. Stein?

Discussion on Advancing the Hearing to Reconstitute the Committee

25

1 MR. STEIN: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. STEIN: I didn't want to preempt anybody else
4 that -

5 THE COURT: Yeah.

6 MR. STEIN: - wanted to come up. We actually are
7 planning to have a discussion with Mr. Greenfield and Mr.
8 McGrane about that specific issue today.

9 THE COURT: Okay.

10 MR. STEIN: The view that we have, I'm not going to
11 try and preempt the discussion, -

12 THE COURT: Yeah.

13 MR. STEIN: - is that it's within the scope of the
14 investigation that the trustee is doing. And until we finish
15 that, it's the kind of thing that probably should be deferred,
16 but -

17 THE COURT: Okay. So you just as soon hold that
18 August date?

19 MR. STEIN: We - we would. And - but we want to be
20 able to have that discussion, because maybe there's something
21 we're missing in our initial consideration of it, and that's why
22 we talk to people.

23 THE COURT: Okay. Well, certainly I didn't want
24 preempt you on that. And what - maybe what I ought to do is
25 just point out that if you all decide that you want to change

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1 the date for that hearing, all you need to do is contact my
2 chambers and we'll specially set you. You're not required to
3 hold the calendar dates that are shown on the internet.

4 MR. STEIN: Thank you, Your Honor.

5 THE COURT: Okay. Are there any other – is there
6 anyone else who wishes to be heard on any of these issues or are
7 there any other things that we should talk about?

8 MR. STEIN: Well, there is the other motion that is –

9 THE COURT: Absolutely. We'll get there.

10 Okay. Let's turn then to the – to the motion for a
11 protective order. Who wishes to be heard with respect to that?
12 To amend the protective order, excuse me.

13 MR. STEIN: If I may, Your Honor, Grant Stein, Alston
14 and Bird. To briefly summarize, there were protective orders
15 entered back in 2003 and 2004 that impacted trustee's ability to
16 get all of the information –

17 THE COURT: Right.

18 MR. STEIN: – the trustee is requesting as part of his
19 – the beginning of the investigation in the areas that we
20 discussed this morning.

21 As part of the process of getting documents, and I
22 want to be clear that we are receiving documents and we are
23 getting cooperation and getting information and it is moving
24 forward. People aren't stonewalling us. I don't want to leave
25 that impression.

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1 Having said that, there has been a lot of sensitivity
2 expressed about 'But you're not under the umbrella of the
3 protective order.' And we talked with Intel and talked with all
4 the other players of the case and ultimately it was determined
5 that it was appropriate to be under the umbrella with respect to
6 the October 17, 2003 protective order but that the areas covered
7 by the September 2004 protective order are so narrow and so
8 sensitive to Intel that we would not come within the scope of
9 that.

10 THE COURT: Okay.

11 MR. STEIN: We have obtained everybody's signature
12 that's involved from before on a stipulation. I represented in
13 the pleadings that the Levene Neale firm had agreed. I don't
14 actually have their signature, but Mr. Bender's on the phone and
15 can address that. With the Court's permission I would hand up a
16 signed stipulation in just a moment.

17 The last two points to address are: There are still
18 some moving parts, but they don't affect the trustee getting
19 access that these documents. Others may want to come under the
20 scope of the protective order, for example, Pillsbury's counsel.
21 Others may want to do that, but no one is saying that we need to
22 wait to get the documents until all those other nits are worked
23 out, people are talking.

24 THE COURT: Okay. I'm very glad to hear that.

25 Okay. Does anyone else wish to be heard?

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1 Mr. Johnson.

2 MR. BENDER: Your Honor, this is Ron Bender. I'd just
3 like to be heard briefly.

4 THE COURT: Oh, certainly. Go ahead, Mr. Bender.

5 MR. BENDER: First, in terms of the stipulation I did
6 not realize that Mr. Stein did not have the signature of my
7 firm. We certainly support the stipulation. So I could get him
8 a signature immediately or just represent that on the record.

9 Separate from the stipulation, because it wasn't
10 stated specifically I filed a pleading a couple of days ago
11 because I just was hoping to have either a written order or an
12 oral ruling by the Court so that there wasn't any ambiguity from
13 any parties, that I want to be able to turn over all of the
14 documents that I was provided during the period of time when I
15 was doing my investigation to the trustee. And while I think
16 that was implied by putting the trustee under the protective
17 order, given the fact that everybody who produced these
18 documents to me made various threats, you know, to me regarding
19 turnover of documents to others, being subject to the protective
20 order, et cetera, and I don't - I was not involved directly in
21 the litigation so I'm not sure if the trustee's stipulation does
22 or doesn't authorize me to do just the simple task of taking all
23 these boxes of documents that were produced to me by the
24 O'Melveny firm, the Pillsbury firm, Marcus Smith, Mr. Bennett,
25 et cetera, I just want - I just want to hand all of them to the

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1 trustee.

2 So in order to make sure that I wasn't doing anything
3 that wasn't consistent with what everybody understood I was
4 doing, I filed my pleading just to make it crystal clear. So if
5 I could obtain from you either a written order or an oral ruling
6 that I have the authority to turn over all those documents, that
7 would be much appreciated.

8 THE COURT: Mr. Johnson, were you going to address
9 that issue?

10 MR. JOHNSON: Yes.

11 THE COURT: Okay. Then please come forward.

12 MR. JOHNSON: Your Honor, the only issue with respect
13 to Mr. Bender's request is that the files that he subpoenaed
14 from various law firms could possibly contain a few documents
15 under the further protective order from 2004 that should be
16 removed before he turns those files over to the trustee.

17 THE COURT: Okay. Mr. Bender, can you identify those?

18 MR. BENDER: Your Honor, I have absolutely no way of
19 doing it. It's kind of the same problem we had last time. I
20 mean when you – when you instructed me to perform the
21 investigation, I served informal and sometimes formal document
22 production requests and specifically what I received is I have
23 one complete box – you know, banker's box of documents from
24 O'Melveny, two complete banker box documents from Pillsbury. I
25 never received anything from Via. And I have, you know, some

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1 emails and some loose documents that I received from Mr. Bennett
2 and Mr. Smith.

3 I have no way of knowing what documents Intel has a
4 problem with and what not. We started to talk about that at the
5 hearing a few months ago and then that hearing turned into, you
6 know, really a hearing about the trustee's motion for a trustee.
7 So I want to do whatever I can to cooperate, but I don't really
8 know what Mr. Johnson means and how I would go about taking
9 these thousands of documents and deciding what I can and can't
10 turn over to a trustee.

11 I don't really understand - I don't really understand
12 the exact mechanics of why the trustee, who has now substituted
13 in as essentially the debtor, the debtor's representative or the
14 estate's representative, why they're not entitled to the
15 documents.

16 The hearing that we had a few months ago was more
17 complicated because at that hearing I was looking to give copies
18 to Mr. McGrane and Mr. Franklin and the other people who wanted
19 to participate along with me in my investigation. And all I'm -
20 all I want to do now is just turn them all over to the trustee.
21 It would be up to the trustee to decide how he does or doesn't
22 share the documents with others.

23 So I - you know, Mr. Johnson's position is, 'Well, I
24 can't turn over documents which are subject to one protective
25 order but I can for others,' I don't have any way of doing that

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1 unless Mr. Johnson goes through the documents first and tells
2 them. And many of the documents came to me after you had
3 already decided that I shouldn't proceed with the investigation.
4 So many of the documents I haven't even personally reviewed.
5 They're just in the same boxes they were in when I originally
6 got them. Maybe – the only other –

7 THE COURT: Let's hear from Mr. Johnson now.

8 Mr. Johnson.

9 MR. JOHNSON: I don't think this is particularly
10 complicated. The documents under the further protective order
11 from 2004 that could potentially be in Pillsbury's files would
12 be handwritten notes from a review by Pillsbury of a
13 particularly sensitive document. Under that 2004 protective
14 order that the Court entered there was a particular document
15 that a very small number of lawyers were allowed to view in a
16 room, not make copies of, et cetera. So there may be
17 handwritten notes of what those documents say, which would be
18 extremely commercially sensitive information to Intel.

19 And so Pillsbury could either confirm that the two
20 boxes delivered to Mr. Bender did not contain those notes or
21 they could locate them and remove them.

22 The same would be true of the box or boxes he received
23 from O'Melveny. They had access and reviewed that document. I
24 don't believe that the debtor's representative had access. And
25 I don't know about Mr. Bennett's firm, but he could certainly

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1 confirm one way or the other.

2 THE COURT: Okay. So what you're saying is that other
3 than records from O'Melveny and Pillsbury, Winthrop, everything
4 else can clearly be turned over?

5 MR. JOHNSON: I would ask that Mr. Bennett's firm
6 confirm one way or the other whether –

7 THE COURT: Mr. Bennett or Mr. Bender?

8 MR. JOHNSON: The counsel for the senior noteholders.

9 THE COURT: Okay. Mr. Bennett's firm?

10 MR. JOHNSON: Yes.

11 THE COURT: Okay.

12 MR. JOHNSON: I believe he was under the further
13 protective order. I don't recall whether he sent a
14 representative of himself reviewed the document at issue.

15 THE COURT: Okay. We thought this was going to be
16 simple. It's getting more complicated.

17 MR. JOHNSON: It's simply – I think Mr. Bender calling
18 each of those three firms and asking whether the documents that
19 were delivered to him contain anything that was subject to their
20 further protective order and, if so, having it removed.

21 THE COURT: Mr. Bender, can you proceed in that way?

22 Mr. Bender?

23 MR. BENDER: Yeah, I'm thinking. I mean I certainly
24 want to cooperate. I'm not sure how this is going to work
25 logistically. Maybe we need to work this out outside the

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1 courtroom and Mr. Johnson simply send me an email of what he
2 wants me to then send to the various parties, because I – as I
3 said, I have two full boxes of Pillsbury documents. I'm not
4 sure how I would even go about figuring out which documents
5 pertain.

6 I mean it seems to me that the easiest thing is for
7 Mr. Johnson to go through the documents and tell me what not to
8 turn over. But last time when I proposed that, he didn't want
9 to – he said his client didn't want to incur the expense of
10 doing that. So now it's sort of left to me to try and figure
11 out what I'm not supposed to turn over, and I just don't know
12 how I would do that.

13 MR. JOHNSON: At the last hearing when we were
14 discussing this it was a different issue. At that time we were
15 talking about removing all of the documents subject to both
16 protective orders, which is a large volume. We're now talking
17 about one or two pieces of paper. I've never seen Pillsbury's
18 files. I've never seen O'Melveny's files. I don't think I'm
19 the appropriate person to go through them, but I think those two
20 firms would know fairly quickly what they turned over.

21 THE COURT: Mr. Stein, what do you recommend?

22 MR. STEIN: Thank you, Judge. Let me come up here.

23 The attorney for Pillsbury is here, Mr. Burks. And if
24 we can identify the date of those notes, we'll be able to find
25 those notes. And those can be determined that they will be

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1 removed from the Pillsbury production; removed easily from the
2 Bates-stamped documents that were turned over to Mr. Bender.

3 The same thing with regard to the senior noteholders
4 and what's in Mr. Bennett's files. Mr. Craver (phonetic) is
5 here on behalf of the senior noteholders. It's an easy thing.
6 The same thing: You look to see if there are notes of a
7 specific date. If so, they're going to be Bates-stamped.
8 They'll be easy to find. We can remove those. And we will
9 coordinate with those two gentlemen to make sure.

10 If something were to slip through we would immediately
11 turn it over to Intel. We wouldn't be using any of those
12 documents. There's not a waiver of anything. It's not that
13 complicated – at least not as I sit –

14 MR. BENDER: Would –

15 THE COURT: Mr. Stein, will you agree to coordinate
16 this?

17 MR. STEIN: Yes, Your Honor.

18 THE COURT: Thank you.

19 Mr. Bender, what else do you have?

20 MR. BENDER: No, Your Honor, if Mr. Stein would take
21 the lead in coordinating that, that would be greatly
22 appreciated.

23 THE COURT: Okay. Thank you very much.

24 MR. STEIN: Thank you, Judge.

25 MR. KRUGER: Your Honor, if I may, Lewis Kruger. Just

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1 to say that we may be asking for – in view of the substitution
2 of counsel, Mr. Bennett was a person authorized under the
3 protective order. I think I may want substitute for him. I
4 will make an appropriate application.

5 THE COURT: Okay. Thank you, Mr. Kruger.

6 Mr. Burk.

7 MR. BURK: Thank you, Your Honor. Similarly to Mr.
8 Kruger, we have the unenviable role of helping Pillsbury sort
9 through 15 years of prepetition representation of the debtor and
10 four years of postpetition representation of the debtor. And
11 there are records both physical and electronic; in making
12 available to the trustee as promptly as we can what the trustee
13 needs to do his job.

14 I think Mr. Stein has confirmed that – that the
15 trustee is satisfied that we are making extraordinary efforts
16 and succeeding as well.

17 Howard Rice is not authorized nor any of its attorneys
18 to view any of the documents under either of the protective
19 orders.

20 THE COURT: Okay.

21 MR. BURK: We are having discussions principally with
22 Intel which appear to be bearing a lot of fruit. but if for
23 some reason we can't come to an understanding because of the
24 sensitivity of these materials to Intel, and Intel is greatly
25 concerned about them for appropriate commercial reasons, it

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1 might be appropriate to set a date with the Court by which all
2 of these issues can be sorted out with the Court's assistance if
3 we can't get stipulations done.

4 THE COURT: I'm not inclined to give you a date but to
5 tell you that I can be very flexible as long as I'm in town.
6 And I'm going to be in town most of the summer.

7 MR. BURK: Very well, Your Honor. Thank you.

8 THE COURT: All right. Okay. Mr. Stein.

9 MR. STEIN: I have the stipulation with all signatures
10 except Mr. Bender's. I don't know if he just wants the record
11 to reflect his consent. And with your permission, I would hand
12 that to your Courtroom Deputy to hand to you.

13 THE COURT: Thank you, Mr. Stein.

14 Mr. Bender, do you have anything for the record?

15 MR. BENDER: No, Your Honor. We support entry of that
16 stipulation.

17 THE COURT: And you consent to it?

18 MR. BENDER: Yes, Your Honor.

19 THE COURT: Very well. Thank you.

20 MR. STEIN: Thank you, Your Honor.

21 THE COURT: Okay. Well, I very much appreciate the
22 efforts that all of you are putting into this. So thank you for
23 what you're doing.

24 And go ahead and give me the order, Ms. McGowan.

25 Do you need your copies before you leave?

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1 MR. STEIN: No. We'll be able to get them off the
2 record. You will see some blue ink on that because some of
3 those were signed today, but it is a full set. Thank you.

4 THE COURT: Okay. All right. Thank you all very
5 much.

6 [COUNSEL]: Thank you, Your Honor.

7 THE COURT: Okay. We're adjourned.

8 THE CLERK: All rise.

9 (The hearing was adjourned at 1:55 o'clock p.m.)

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State of California)
County of San Joaquin) SS.

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

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Dated June 30, 2007